

**CHAPTER 21-11**  
**NATURAL RESOURCES DEVELOPMENT BOND ISSUE**

**21-11-01. Declaration and finding of public purpose.** The legislative assembly of the state of North Dakota hereby declares and finds that it is and has been its purpose in preparing and adopting the provisions of this chapter to promote the economic growth of the state, the development of its natural resources, and the prosperity and welfare of its people, by providing a source of low-cost power in the state which will aid the establishment of additional industrial plants and activities within North Dakota, increasing production of wealth and the amount of employment, particularly during those seasons when employment in farming and ranching is slack and preventing a loss of population and promoting an increase in growth of population.

**21-11-02. Application for loan - Form - Contents - Preference of applications.** Any privately or cooperatively owned enterprise for the purpose of securing a loan from this state for purposes of planning, constructing, acquiring, equipping, improving, or extending facilities for the conversion of North Dakota's natural resources into low-cost power and the generation and transmission of such power, and the acquisition of real and personal property and water and mineral rights needed for such facilities, or any of such purposes, may file an application with the department of commerce division of economic development and finance. The application must be in the form required by the division and must be accompanied by a complete and fully detailed outline and description of the applicant's plan of operation. In the consideration of applications the division shall consider the following factors:

1. Preference must be given to applicants with the following qualifications:
  - a. Applicants who are experienced in the generation or transmission of power, and who at the time of application have access to alternate markets for the sale of such power.
  - b. Applicants who are residents of North Dakota, or private or cooperative enterprises incorporated under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person, corporation, or limited liability company owns part or all of the stock of the applicant or limited liability companies organized under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person, limited liability company, or corporation owns part or all of the membership interests of the applicant, or is engaged in a partnership or joint enterprise with the applicant.
2. The provisions of subsection 1 do not prohibit the division from approving loans to applicants not possessing the qualifications therein described, if in the judgment of the division such approval would better carry out the objectives of this chapter as stated in section 21-11-01.
3. Each application shall include information for the purpose of showing to the division and may be approved only if the division determines:
  - a. That the facilities proposed to be financed by the loan will result in significant additional industrial or other economic activity in North Dakota which would not occur in the absence of a state loan.
  - b. That the cost of power furnished by the facilities financed by the loan will be significantly lower than it would be without a loan made under this chapter.
  - c. That the facilities financed will furnish power at the lowest possible cost to stimulate industrial development, benefit the general public, and expand the use of North Dakota fuel resources.

4. In considering applications the division may establish additional reasonable criteria with respect to the financial qualification of individuals and organizations requesting loans.

**21-11-03. Processing of application - Fee - Purpose.** The department of commerce division of economic development and finance shall process each application and if it determines the applicant is eligible for the loan and has complied with all requirements, it shall request an application fee of not more than fifty thousand dollars. The fee must be deposited in a special and separate fund in the state treasury and must be expended by the division of economic development and finance for purposes of investigating the applicant and evaluating the technical and economic feasibility of the plans and specifications as submitted by the applicant. The division may consult or contract with any person or private, state, or federal department, agency, or entity, for purposes of that investigation or evaluation. All departments, agencies, institutions, and officials of this state and its political subdivisions shall provide to the division of economic development and finance such aid, information, and assistance as it may request in regard to any matter relative to the applicant or such applicant's plans and specifications. The division of economic development and finance may conduct any private or public hearing it may deem necessary in the course of that investigation or evaluation. Any unexpended portion of the funds received as an application fee must be refunded to the applicant after the payment of all costs of investigation and evaluation of the application. There is hereby appropriated from each application fee these funds as may be necessary to pay all costs of investigation and evaluation and pay refunds as provided in this section.

**21-11-04. Approval or rejection of application.** Upon completion of all investigations and evaluations of any matter relative to the applicant or the submitted application and plan, the department of commerce division of economic development and finance shall either reject the application as submitted, approve the application as submitted, or offer to approve the application if modified in accordance with any recommendation made by the commission as a result of any such investigation or evaluation. If the applicant fails or refuses to agree to those modifications, the application must be rejected.

**21-11-05. Approved application filed with industrial commission.** Upon approval of the application, as submitted or modified, the department of commerce division of economic development and finance shall file the application, along with its report and recommendations, received by it as a result of any investigation and evaluation, with the industrial commission. The department of commerce shall prepare and submit any necessary legislation for the appropriation of additional funds or the authorization of the issuance of bonds at the following session of the legislative assembly, or at a special session if called in accordance with the constitution.

**21-11-06. Disbursements of loan - Inspection fee.** If the industrial commission finds that the approved loan application has been filed and processed as required by this chapter and the proposed loan agreement is in proper legal form and the amount to be disbursed thereunder, with other previous disbursements, does not exceed the funds appropriated for that purpose, it shall authorize the execution of the loan agreement with the applicant by the director of the department of commerce division of economic development and finance on behalf of the state. Prior to the disbursement of any funds pursuant to the loan agreement, the applicant shall deliver to the director of the division of economic development and finance a supervision fee in such amount as may be specified in the loan agreement, which fee must be deposited in a special fund in the state treasury. The fee must be expended by the division of economic development and finance for the purpose of periodic inspection of the construction of such power generation or transmission facilities, and disbursements to the borrower under the loan agreement may be made only upon certification by the director or a person appointed by the director which the construction is being carried on in accordance with the loan agreement and that the loan funds are due the borrower under the agreement. Upon the completion of the construction of the facilities, any unexpended balance of the inspection fee must be refunded to the borrower. There is hereby appropriated from each inspection fee those funds as may be necessary to provide for the inspections and refunds as provided in this section.

**21-11-07. Appropriation of funds.** The sum of fifty thousand dollars is hereby appropriated as a continuing appropriation to the state industrial commission, out of the proceeds of bonds of the state which may be issued by the industrial commission under the provisions of this chapter, for the purpose of making loans of the nature herein described. No loan may be disbursed at any time in an amount which, with all previous disbursements of loans under this chapter, exceeds the sum herein appropriated plus any additional sums hereafter appropriated by the legislative assembly for that purpose, whether out of the proceeds of bonds or otherwise.

**21-11-08. General obligation state of North Dakota bonds, natural resources power development series - Bond purpose.** An issue of general obligation bonds of the state, to be designated as state of North Dakota bonds, natural resources power development series, in an aggregate amount not to exceed at any time the amount appropriated in section 21-11-07 plus any additional sums hereafter appropriated by the legislative assembly for the making of loans under this chapter, is hereby authorized for the sole purpose of providing funds to be loaned in accordance with loan agreements made and executed as herein provided, and under the conditions, in the manner, and for the purpose stated in section 14 of article X of the Constitution of North Dakota.

**21-11-09. Preparation of bonds.** The preparation, handling, issuance, sale, and delivery of bonds under this chapter must be supervised and controlled by the state industrial commission, which shall issue and sell them in such manner, in such number of series, at such times, in such form and denominations, bearing interest at such rate or rates, maturing on such dates, either without option of prior redemption or subject to prepayment upon such notice and at such times and prices, payable at such bank or banks, within or without the state, with such provisions for registration, conversion and exchange and for the issuance of notes in anticipation of the sale and delivery of definitive bonds, and in accordance with such further regulations as the commission shall determine subject to the limitations contained in this chapter. The bonds of each series must mature in order of serial numbers, and the first installment of principal thereof must fall due not more than three years and the last installment not more than forty years from the date of the bonds, and no installment of principal of the series maturing in any year may be less than one-third of the amount of the largest installment maturing in any subsequent year after two years from the issue date, except that the amount of such installments of principal may be fixed in such manner that the increase thereof from year to year approximately equals the decrease from year to year in the interest on the bonds remaining unpaid. The bonds must be executed by the governor and by the state treasurer under the great seal of the state of North Dakota and must be attested by the secretary of state, and any coupons attached thereto must be executed by the signatures of the same officers. The signatures of all officers on the coupons and the seal and the signatures of all but one officer on the face of each bond may be printed, lithographed, stamped, or engraved thereon. The state auditor and secretary of state shall also endorse and sign on each bond a certificate showing that the bond is issued pursuant to law and is within the debt limit. Interest on each bond must cease at maturity, or on a prior date upon which the bond has been called for prepayment and redemption in accordance with its terms, unless the holder shall then present the same for payment and payment is refused. The industrial commission has power also to issue bonds of the state to refund bonds issued hereunder at any time on such terms and under such conditions as to it may seem proper, and as are consistent with the provisions of the bonds refunded or are consented to by the holders of such bonds.

**21-11-10. Sale and delivery of bonds - Deposit of proceeds.** The industrial commission shall act as agent of the state for the negotiation, sale, and delivery of all bonds issued under this chapter. Such bonds must be sold from time to time for cash at not less than par and accrued interest to the best advantage of the state. In offering such bonds for sale the industrial commission shall reserve the right to reject any or all bids therefor. All of the proceeds of the bonds must be received by the industrial commission and by it placed in a separate fund in the state treasury to be used only for the purpose for which such bonds are issued.

**21-11-11. Bonds tax exempt.** All bonds issued under the provisions of this chapter and interest thereon are exempt from taxation.

**21-11-12. Bonds a general obligation of the state of North Dakota.** Upon receipt of payment therefor, the industrial commission shall deliver to each purchaser of bonds issued under this chapter the bonds purchased by that purchaser, and upon delivery of such bonds the full faith and credit and unlimited taxing resources of the state of North Dakota stand pledged for the punctual full payment of each and all of such bonds and the interest thereon to the lawful holder and owner thereof as bonds and coupons become due and are presented for payment.

**21-11-13. Tax levy.** In each year commencing with the year this chapter takes effect and ending after all bonds issued under this chapter have been paid or funds are on hand sufficient for their payment, the industrial commission shall prepare a statement of the condition of the sinking fund for bonds issued hereunder and shall determine the annual tax necessary to pay the interest and principal of such bonds as such principal and interest become due in the following year and to and including July first in the year thereafter. The annual tax so determined must be certified by the industrial commission to the state board of equalization in ample time to permit the levy thereof for each year, and the board of equalization shall make an annual levy of property taxes against all of the taxable property in the state of North Dakota in an aggregate amount not less than that certified to it by the industrial commission year by year. The unexpended balance on hand in the sinking fund for the bonds at the time of certifying such tax each year, whether such balance is derived from taxes levied hereunder or from loan repayments or other revenues deposited in the sinking fund, must be taken into account by the industrial commission, and the tax certified under this section in such year may be reduced accordingly. There are hereby appropriated all funds required for the payment of interest and principal of all bonds issued and sold under this chapter as such principal and interest become due, and this appropriation and the said taxes and other provisions for payment of said bonds and interest may not be repealed or discontinued until the said bonds and interest have been paid.

**21-11-14. Sinking fund.** The sinking fund for the payment of bonds issued under this chapter, together with interest thereon, must be established and maintained in the office of the state treasurer who must be its official custodian and shall at all times maintain adequate books and records thereof. The state treasurer shall make reports of the condition of the sinking fund to the industrial commission on its request. All taxes levied and all sums appropriated and transferred for payment of such bonds and interest must be deposited in the sinking fund and must be disbursed by the state treasurer in payment of the bonds and interest thereon directly or through a paying agent to be designated by the industrial commission. All payments of principal and interest on loans made from the proceeds of such bonds and all other revenues received under the terms of the loan agreements pertaining thereto are hereby appropriated to and must be deposited in the sinking fund as received, with the exception of such loan payments and other revenues as may under authority of any future act of the legislative assembly be pledged by the state industrial commission to a special fund for the payment and security of revenue bonds, made payable solely from such loan payments and revenues. Loan payments and other revenues pledged pursuant to any such future authorization must be deposited as received in a special fund or funds for the payment and security of revenue bonds according to the terms of any such bonds, whether or not such payments or revenues are received under a loan agreement respecting facilities financed from the proceeds of general obligation bonds. On request of the industrial commission, the state treasurer shall make good or forestall any existing or threatened deficit in such sinking funds out of any available moneys of the state in the state treasurer's custody, provided that all moneys so used must be restored.

**21-11-15. Transfer of balance.** Upon the retirement of all general obligation bonds issued hereunder and the interest thereon, any unexpended balance in the sinking fund created by this chapter must be transferred by the state treasurer to the general fund.

**21-11-16. Certificates of indebtedness against uncollected taxes.** If at any time the balance in the sinking fund for an issue of bonds under this chapter is not sufficient to pay maturing bonds and interest punctually when due, or when the sinking fund is threatened with a deficit, the state treasurer may borrow sufficient funds upon certificates of indebtedness of the state of North Dakota to cover payment of principal or interest or both so as to cure or forestall default. Such certificates may be issued in anticipation of collection of taxes, must be signed by

the governor and state treasurer, must mature not more than three years from date of issue, and must bear interest at a rate to be determined by the industrial commission. They must be retired from tax collections and are eligible for purchase by the state of North Dakota and its several agencies and departments and the trust funds thereof, except school trust funds.

**21-11-17. Investment of funds.** The proceeds of bonds and moneys in the sinking fund for bonds issued under this chapter must be deposited in the Bank of North Dakota at interest or invested in general obligations of the United States government, as may be directed by the industrial commission.

**21-11-18. Protection of purchaser.** The purchaser of bonds issued under this chapter is not obliged to see to the application of the purchase price thereof but is protected fully in paying for such bonds by the receipt of the industrial commission or of its agent delivering such bonds as herein provided.

**21-11-19. Limitation of action.** No action may be brought or maintained in any court of this state questioning the validity of any bonds issued under this chapter or of any tax levied for such bonds unless such action has been commenced within thirty days after the adoption of the resolution of the industrial commission awarding sale of such bonds.